

HOUSE BILL 1235

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By: **Delegates Waldstreicher, Simmons, Barnes, Carter, Dumais, Gutierrez, Lee, and McConkey**
Introduced and read first time: February 18, 2010
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Criminal Gangs – Underlying Crimes, Sentencing, and Gang**
3 **Leaders**

4 FOR the purpose of adding certain crimes to the list of underlying crimes that may
5 form the basis for conviction of participation in criminal gang activity; altering a
6 certain prohibition concerning participation in criminal gang activity to provide
7 that a person may not actively participate in a criminal gang under certain
8 circumstances; requiring a sentence imposed for a second or subsequent offense
9 of participation in criminal gang activity to be separate from and consecutive to
10 a certain other sentence; requiring a sentence imposed for participation in
11 criminal gang activity that results in the death of a victim to be separate from
12 and consecutive to a sentence for a certain other sentence; prohibiting a person
13 from organizing, supervising, financing, or managing a criminal gang;
14 establishing penalties; requiring a certain sentence to be separate from and
15 consecutive to a certain other sentence; and generally relating to criminal
16 gangs.

17 BY repealing and reenacting, with amendments,
18 Article – Criminal Law
19 Section 9–801 and 9–804
20 Annotated Code of Maryland
21 (2002 Volume and 2009 Supplement)

22 BY adding to
23 Article – Criminal Law
24 Section 9–805
25 Annotated Code of Maryland
26 (2002 Volume and 2009 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Criminal Law**

4 9–801.

5 (a) In this subtitle the following words have the meanings indicated.

6 (b) “Coerce” means to compel or attempt to compel another by threat of harm
7 or other adverse consequences.

8 (c) “Criminal gang” means a group or ongoing association of three or more
9 persons whose members:

10 (1) individually or collectively engage in a pattern of criminal gang
11 activity;

12 (2) have as one of their primary objectives or activities the commission
13 of one or more underlying crimes, including acts by juveniles that would be underlying
14 crimes if committed by adults; and

15 (3) have in common an identifying sign, symbol, name, leader, or
16 purpose.

17 (d) “Pattern of criminal gang activity” means the commission of, attempted
18 commission of, conspiracy to commit, or solicitation of two or more underlying crimes
19 or acts by a juvenile that would be an underlying crime if committed by an adult,
20 provided the crimes or acts were not part of the same incident.

21 (e) “Solicit” has the meaning stated in § 11–301 of this article.

22 (f) “Underlying crime” means:

23 (1) a crime of violence as defined under § 14–101 of this article;

24 (2) a [felony] violation of § 3–203, § 3–701, § 4–503, § 5–602, § 5–603,
25 § 6–103, § 6–109, § 6–202, § 6–203, § 6–204, § 7–104, § 7–105, § 9–302, § 9–303, [or] §
26 9–305, **§ 11–303, § 11–304, OR § 12–102** of this article; or

27 (3) a [felony] violation of § 5–133 of the Public Safety Article.

28 9–804.

29 (a) A person may not:

1 (1) **ACTIVELY** participate in a criminal gang knowing that the
2 members of the gang engage in an ongoing pattern of criminal gang activity; and

3 (2) knowingly and willfully direct or participate in the commission of
4 an underlying crime, or act by a juvenile that would be an underlying crime if
5 committed by an adult, committed for the benefit of, at the direction of, or in
6 association with a criminal gang.

7 (b) A person may not commit a violation of subsection (a) of this section
8 involving the commission of an underlying crime that results in the death of a victim.

9 (c) (1) (i) Except as provided in subparagraph (ii) of this paragraph, a
10 person who violates this section is guilty of a felony and on conviction is subject to
11 imprisonment not exceeding 10 years or a fine not exceeding \$100,000 or both.

12 (ii) A person who violates subsection (b) of this section is guilty
13 of a felony and on conviction is subject to imprisonment not exceeding 20 years or a
14 fine not exceeding \$100,000 or both.

15 (2) **(I)** A sentence imposed under **SUBSECTION (C)(1)(I) OF** this
16 section **FOR A FIRST OFFENSE** may be separate from and consecutive to or concurrent
17 with a sentence for any crime based on the act establishing a violation of this section.

18 **(II) A SENTENCE IMPOSED UNDER SUBSECTION (C)(1)(I) OF**
19 **THIS SECTION FOR A SECOND OR SUBSEQUENT OFFENSE, OR (C)(1)(II) OF THIS**
20 **SECTION SHALL BE SEPARATE FROM AND CONSECUTIVE TO A SENTENCE FOR**
21 **ANY CRIME BASED ON THE ACT ESTABLISHING A VIOLATION OF THIS SECTION.**

22 (d) A person may be charged with a violation of this section only by
23 indictment, criminal information, or petition alleging a delinquent act.

24 (e) (1) The Attorney General, at the request of the State's Attorney for a
25 county in which a violation or an act establishing a violation of this section occurs,
26 may:

27 (i) aid in the investigation of the violation or act; and

28 (ii) prosecute the violation or act.

29 (2) In exercising authority under paragraph (1) of this subsection, the
30 Attorney General has all the powers and duties of a State's Attorney, including the use
31 of the grand jury in the county, to prosecute the violation.

32 (3) Notwithstanding any other provision of law, in circumstances in
33 which violations of this section are alleged to have been committed in more than one
34 county, the respective State's Attorney of each county, or the Attorney General, may

1 join the causes of action in a single complaint with the consent of each State's Attorney
2 having jurisdiction over an offense sought to be joined.

3 (f) Notwithstanding any other provision of law and provided at least one
4 criminal gang activity of a criminal gang allegedly occurred in the county in which a
5 grand jury is sitting, the grand jury may issue subpoenas, summon witnesses, and
6 otherwise conduct an investigation of the alleged criminal gang's activities and
7 offenses in other counties.

8 **9-805.**

9 (A) A PERSON MAY NOT ORGANIZE, SUPERVISE, FINANCE, OR MANAGE A
10 CRIMINAL GANG.

11 (B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY
12 AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS
13 OR A FINE NOT EXCEEDING \$100,000 OR BOTH.

14 (C) A SENTENCE IMPOSED UNDER THIS SECTION SHALL BE SEPARATE
15 FROM AND CONSECUTIVE TO A SENTENCE FOR ANY CRIME BASED ON THE ACT
16 ESTABLISHING A VIOLATION OF THIS SECTION.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2010.